IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BILL H. DOMINGUEZ, on behalf of himself and all others similarly situated, Plaintiff, v. YAHOO!, INC. Defendant.	C.A. No. 2:13-cv-01887

DECLARATION OF GARETH SHUE IN SUPPORT OF YAHOO INC.'S RENEWED MOTION FOR SUMMARY JUDGMENT

DECLARATION OF GARETH SHUE

I, Gareth Shue, declare as follows:

1. I am the Sr. Director of Engineering at Yahoo! Inc. ("Yahoo"), the defendant in this action. I am over eighteen years of age and am fully competent to make this declaration. I have personal knowledge of the matters stated below or am informed of and believe them to be true based on documents maintained by Yahoo in the ordinary course of business. If called as a witness, I could and would competently testify regarding such matters.

2. I have been at Yahoo since 2007. As part of my responsibilities at Yahoo, I lead engineering teams to develop message delivery and spam filtering systems for Yahoo Mail.

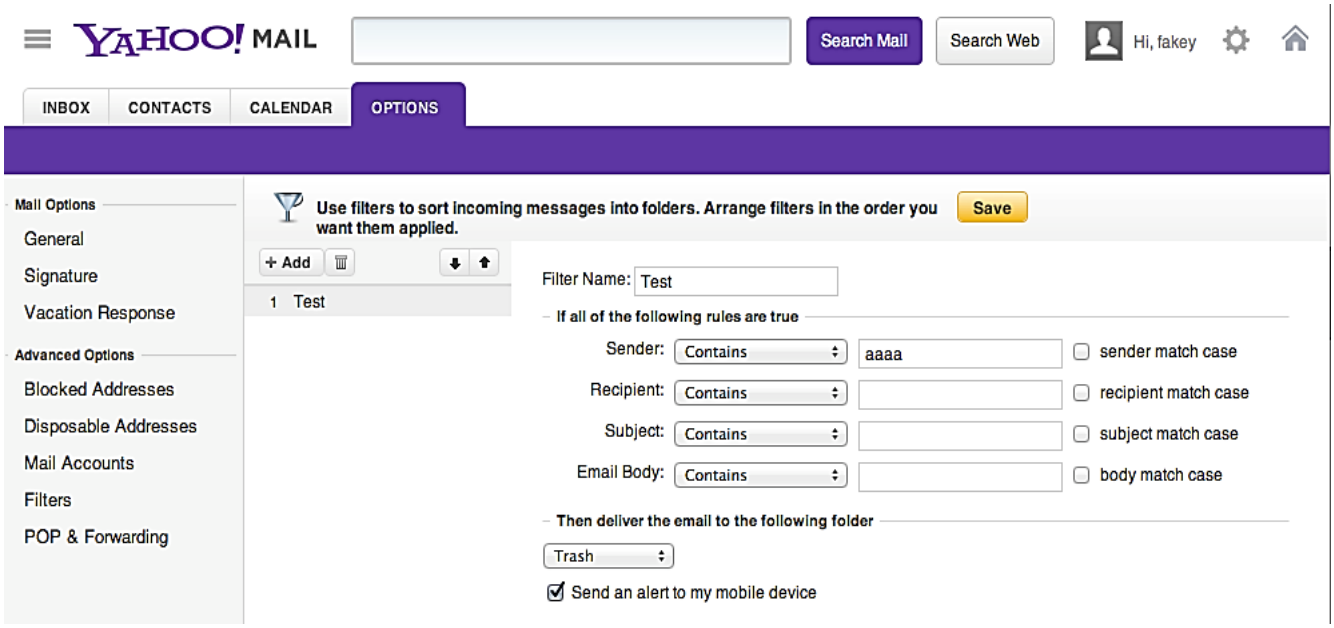
3. Yahoo is an internet company that is widely known for its free consumer services, including personalized news and financial websites, Yahoo Messenger, Yahoo search and the Yahoo email client and associated protocol provided by Yahoo. Yahoo email accounts are offered free of charge and can be obtained and used by anyone who has registered as a user with a Yahoo ID.

4. Yahoo formerly offered its email account holders a feature that allowed registered Yahoo users to forward new, incoming emails to their mobile phones as text message alerts (the "Email SMS Service"). In the days prior to widespread access to smartphones, this free service made users aware of new emails, including sender and subject information, without needing to log on to a computer. Yahoo discontinued this service in October 2013.

A. A Yahoo User Had to Affirmatively Sign Up To Use The Email SMS Service And Manually Enter His Or Her Mobile Phone Number To Receive Text Message Alerts

5. The Email SMS Service was not capable of sending a text message alert unless a Yahoo user affirmatively opted in and instructed the service to forward alerts to his or her mobile phone by manually entering the user's number directly into the system. To use the Email SMS Service, a Yahoo user was required to manually create an email "filter" to forward alerts to his or her mobile phone. A filter set up by a user would sort incoming emails based on "rules" created and typed out by the user. The rules could be based on any one or more of the following criteria:

sender, recipient, subject, and email body. A Yahoo user could configure the service to send text message alerts for all incoming emails or create specific rules to limit which messages he or she would receive as text message alerts. However, a Yahoo user could not receive any text message alerts without first manually inputting his or her mobile telephone number and manually checking a box to enable email alerts to his or her mobile device, as shown in the screenshot of the user interface depicted below:



Upon checking the "Send an alert to my mobile device" box and saving the filter, a pop-up window would appear to prompt the Yahoo user to manually enter his or her mobile telephone number. Once the mobile number was entered, another pop-up window would prompt the Yahoo user to confirm that the number entered belonged to the Yahoo user. If a Yahoo user did not complete this verification process, the Email SMS Service would not store the number or use it to forward text message alerts to the user's mobile phone. The process of instructing the service to forward emails could be initiated only by users.

6. To receive email alerts on a mobile phone, Yahoo's Email SMS Service would convert email messages into a format that could then be forwarded to the user's wireless carrier (such as Verizon, AT&T, or T-Mobile), which in turn would send an SMS message to the user's mobile device. SMS stands for short message service, which is a text messaging service

component of phone, web, or mobile communication system, using standardized communications protocols that allow the exchange of short text messages between devices.

7. The text message alerts forwarded via the Email SMS Service included the sender's email address, the subject of the email, some or all of the text from the body of the incoming email, and a link to the login webpage for Yahoo Mail, so the Yahoo user could, if he or she wanted to, login to his or her Yahoo email account and read the email. If the email was longer than 115 characters, the text of the incoming email would be truncated in the text message alert because SMS protocols restrict messages to 160 characters in length.

8. Yahoo users were never required to sign up for this service; it was entirely voluntary and the service was never offered as a default feature on user accounts. Unless a Yahoo user affirmatively opted in to use the Email SMS Service, he or she would not and could not receive text message alerts of incoming emails received by his or her Yahoo email account.

B. At No Time Did The Email SMS Service Have the Capacity To Either Generate Random Or Sequential Telephone Numbers Or Send Text Messages To A Stored List Of Randomly Or Sequentially Generated Numbers

9. The Email SMS Service did not and could not generate telephone numbers randomly, sequentially, or in any other manner, and was not capable of sending text messages to randomly or sequentially generated telephone numbers because based on its design, it could only forward an incoming email to a single mobile number manually inputted by a Yahoo user. Neither Yahoo nor any Yahoo user could have used the Email SMS Service to create, generate, or produce telephone numbers in any way, including generating random or sequential numbers. For example, the Email SMS Service never had any capability to generate and send messages to random phone numbers within a specified area code or geographic location, or to generate and send message to sequential telephone numbers such as (111) 111-1111, (111) 111-1112, (111) 111-1113, and so on. The Email SMS Service never had the capability or functionality to generate numbers in any way at all because it was never designed to perform this function.

10. The Email SMS Service was custom-designed and developed by Yahoo engineers to perform a single function: to forward a text message alert of an incoming email received by a Yahoo user to a single mobile telephone number manually inputted by the user. I have reviewed the source code for the Email SMS Service and it demonstrates that Yahoo never built into the platform any capability or functionality, whether active or latent, that could have enabled it to generate phone numbers, whether randomly, sequentially, or in any other fashion, on its own, or paired with any other software, device or hardware. Indeed, there would not have been any reason to do so because the sole purpose of the Email SMS Service was to forward emails received by a Yahoo user to his or her mobile device if, and only if, the user (1) manually elected to use the Email SMS Service, and (2) manually entered a single, specific telephone number to receive such text message alerts. The Email SMS Service never had the capability or functionality to generate telephone numbers (whether randomly, sequentially, or in any other manner), nor would it ever have had the need to generate telephone numbers, because its sole function was to forward a user's emails to the single telephone number manually inputted by the user.

11. It likewise was not possible for the Email SMS Service to forward a single text message alert to more than one telephone number because the Email SMS Service was specifically designed for a user to send himself or herself text message alerts on only one mobile number at a time. Even if a Yahoo user subsequently manually entered and manually verified a different telephone number to receive text message alerts via the Email SMS Service, the Email SMS Service was only capable of sending a text message alert to the most recent mobile telephone number entered and verified by the Yahoo user, and as such, was not capable of storing randomly or sequentially generated numbers to be sent a text message alert. Neither Yahoo nor a Yahoo user could have set up the Email SMS Service to send a text message alert as a "mass text" or "text blast" because the service was designed and built to send only a single text message alert containing part or all of a single email message to a single mobile number inputted by a Yahoo user. In other words, the Email SMS Service was a one-to-one system that was only

capable of sending one text message alert for each incoming email, to one mobile telephone number entered by the Yahoo user.

12. Accordingly, because text message alerts forwarded via the Email SMS Service were not and could not be sent to telephone numbers that were randomly or sequentially generated—only to the specific mobile number manually inputted by an individual Yahoo user—the Email SMS Service did not have any capability or functionality, whether active or latent, to store or produce telephone numbers to be called, using a random or sequential number generator, and to call those numbers.

C. At No Time Was The Email SMS Service Ever Connected To Any Server, System, Or Database That Had Any Capacity To Generate Phone Numbers

13. The Email SMS Service operated with three proprietary Yahoo platforms – a database called the "MSDB," Yahoo's user database (the "UDB"), and Yahoo's SMS gateway known as "Athena" – each of which was wholly proprietary and custom-made by Yahoo, and none were capable of generating random or sequential telephone numbers, or storing randomly or sequentially generated telephone numbers to be sent a text message. A Yahoo user's request to receive text message alerts and the "rules" manually created by the Yahoo user when setting up the "filter" or criteria referenced in paragraph 5 above, were stored in the MSDB, which is a component of Yahoo Mail. The mobile telephone number the Yahoo user manually entered to be sent text message alerts via the Email SMS Service was stored in the UDB. Text messages sent via the Email SMS Service were then transmitted by Athena to the Yahoo user's mobile carrier, which would then deliver the text message alert.

MSDB

14. The MSDB performs the limited function of storing the "rules" created by a Yahoo user in connection with setting up the Email SMS Service, as described above in paragraph 5, and other user preferences relating to Yahoo Mail.

15. For every incoming email addressed to a Yahoo email account, Yahoo's internal network protocol used for email transmission would transmit the email to the appropriate

Yahoo's user mailbox (if the system confirmed that the email's destination address matched an existing Yahoo email address) and retrieve filter rules from the MSDB to determine whether the sender, recipient, subject, or email body of the incoming email message matched any of the "rules" the Yahoo user had created in setting up the Email SMS Service. If there was such a match, the system would execute the rule that the incoming email should be forwarded as a text message alert via the Email SMS Service, and the subject, sender, and text of the email would then be transmitted to Athena.

16. The MSDB does not store telephone numbers and does not have any existing, active, or latent capability or functionality to generate phone numbers, or to store randomly or sequentially generated phone numbers to be sent a text message alert via the Email SMS Service. It is simply a database and its sole design and purpose is to store user preferences for Yahoo Mail. It did not and could not perform any functions in connection with the Email SMS Service other than the lookup process described above in paragraph 15.

UDB

17. The UDB performs the limited function of storing the telephone number manually inputted and manually verified by a Yahoo user in connection with setting up the Email SMS Service. Yahoo's UDB is a proprietary, custom-made database that stores information provided by Yahoo users and other information about Yahoo users' accounts. When the Email SMS Service was in operation, if a Yahoo user had manually entered and manually verified his or her mobile telephone number to receive text message alerts via the Email SMS Service, that mobile number was stored in a specific key in the UDB, which would indicate that that number was designated for use only by the Email SMS Service.

18. The UDB does not have any existing, active, or latent capability or functionality to generate phone numbers randomly or sequentially, or to store randomly or sequentially generated phone numbers to be sent a text message alert via the Email SMS Service. Like the MSDB, the UDB is a database and its sole design and purpose is to store Yahoo user account

information. It did not and could not perform any functions in connection with the Email SMS Service other than to store the mobile number manually inputted by a user, as described above.

19. To protect the privacy of Yahoo users, information in a Yahoo user's UDB profile is stored separately from another Yahoo user's UDB profile. Additionally, access to the UDB is tightly controlled and available to very few Yahoo employees. For those who are permitted to access the UDB, it is searchable by Yahoo ID or user name only. Accordingly, a Yahoo property like the Email SMS Service must first have a Yahoo ID in order to access a telephone number stored in the UDB for that Yahoo ID, and the Email SMS Service was capable of sending a text message alert to only the mobile telephone number most recently manually inputted and verified for that Yahoo ID user's profile.

Athena

20. Athena performs the limited function of transmitting text messages from particular Yahoo properties like the Email SMS Service to the appropriate wireless carriers for delivery. Athena is a proprietary platform custom-designed and built by Yahoo engineers for that particular purpose. It acts as a funnel that connects the Email SMS Service to the recipient's wireless carrier, which ultimately delivers the text message to the mobile device.

21. When forwarding a text message alert requested by a user, the Email SMS Service would transmit a packet of data to Athena consisting of the recipient's Yahoo ID, the sender's email address, the subject of the incoming email, and the text from the body of the incoming email. When this packet of data arrived in Athena, it performed three processes, described below.

a) First, Athena would query the UDB for the Yahoo ID contained in the packet of data to retrieve the telephone number inputted by the user from the appropriate UDB key. Upon retrieving the telephone number, Athena would query a third-party service called Net Number (not owned or operated by Yahoo) that identified the wireless carrier associated with the recipient's telephone number and responded to the query with a code identifying that carrier.

b) Second, if the text of the body of the incoming email message exceeded 115 characters, Athena would truncate the text of the email to include only the first 115 characters for inclusion in the text message alert.

c) Third, Athena would then deliver a packet of data consisting of the text of the text message alert and the Yahoo user's telephone number as a text message to the proper wireless carrier. All three processes that Athena performed to deliver a text message alert usually happened within milliseconds.

22. Athena does not have any existing, active, or latent capability or functionality to generate telephone numbers, or to store randomly or sequentially generated phone numbers to be sent a text message alert via the Email SMS Service. Athena also cannot be used to create text messages on its own, independently of any other Yahoo property, and cannot add more than one telephone number to a text message alert sent via the Email SMS Service.

23. There is no user interface associated with Athena, which can only operate in connection with a Yahoo property like the Email SMS Service. Although Athena transmits text messages to wireless carriers for delivery for several Yahoo properties, those Yahoo properties do not and cannot interact with one another in any way through Athena.

24. The Email SMS Service, including the MSDB, UDB, and Athena, could not be configured or modified to send text message alerts of emails received to randomly or sequentially generated telephone numbers, as opposed to a mobile number inputted by the email recipient. The Email SMS Service was not capable of integrating any other Yahoo property, "off the shelf" dialing system, or third-party application (such as Microsoft Excel) or equipment, that could have performed these functions. Nor could the Email SMS Service be used in conjunction with any device or hardware that would have enabled it to send text message alerts to randomly or sequentially generated numbers. Further, it was not possible for any Yahoo user or other third party to write a program to modify the Email SMS Service, or through software changes or updates, including the MSDB, UDB, and Athena, to send text message alerts to randomly or sequentially generated telephone numbers (whether stored or produced by the Email SMS

Service) because the Email SMS Service was designed to only send text message alerts of incoming emails to the mobile number inputted and verified by a Yahoo user (i.e., the number to be called), and not to randomly or sequentially generated phone numbers.

25. From an engineering standpoint, there would have been no reason to design the Email SMS Service to enable it to generate random or sequential telephone numbers on its own, or to use any random or sequential number generator, because the Email SMS Service was custom-made by Yahoo engineers for the sole purpose of allowing Yahoo users to forward personal emails (in the form of text message alerts) to the mobile telephone numbers inputted by users, not to random or sequential numbers. Yahoo engineers typically develop Yahoo properties, like the Email SMS Service, to perform only the technical functions necessary for the property to achieve its intended objective. Yahoo engineers typically do not develop Yahoo properties with latent functions or the ability to perform tasks beyond what is required to achieve the product's purpose, which was true for the Email SMS Service.

26. Accordingly, the Email SMS Service did not have any capability or functionality, whether active or latent, present, existing, or potential, to store or produce telephone numbers to be called, using a random or sequential number generator, and to call those numbers.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct and that this Declaration was executed on January 20, 2016 in Sunnyvale, California.

Gareth Shue

CERTIFICATE OF SERVICE

I, Brian T. Feeney, attorney for Defendants, hereby certify that on January 22, 2016, I served a true and correct copy of the foregoing Declaration of Gareth Shue In Support of Yahoo! Inc.'s Renewed Motion for Summary Judgment via this Court's Electronic Court Filing System upon the following counsel of record:

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